

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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JAMES VARNADO #135330,

Plaintiff,

v.

Case No. 2:07-CV-158

JERI-ANN SHERRY, et al.,

HON. GORDON J. QUIST

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court has before it Plaintiff's Objections to the report and recommendation dated August 28, 2008. In his report and recommendation, Magistrate Judge Greeley recommended that the Court grant Defendants Sherry's and Eicher's motions for summary judgment based upon lack of exhaustion. He further recommended that the Court grant Defendants CMS and Kinnerly's motion to dismiss on the merits. In particular, the magistrate judge concluded that dismissal on the merits is proper with regard to the claims against CMS and Kinnerly because Plaintiff failed to allege the existence of a CMS policy that caused the alleged deprivation, and Plaintiff's allegation that Defendant Kinnerly would not allow Plaintiff to see another physician for medical treatment failed to state an Eighth Amendment claim. The magistrate judge concluded that Plaintiff's claims against Sherry and Eicher are subject to dismissal because Plaintiff failed to file a Step III grievance.

After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted.

Plaintiff's objections consist largely of recitation of legal principles and case citations. He does not raise any specific argument with regard to the claims against Defendants CMS and

Kinnerly. Regarding the exhaustion issue, Plaintiff continues to maintain that he was not required to exhaust his claims before filing his complaint. However, the case he cites for this proposition, *Dickerson v. Warden, Marquette Prison*, 99 Mich. App. 630, 298 N.W.2d 841 (1980), is inapplicable because it was decided by the Michigan Court of Appeals fifteen years prior to the adoption by Congress of the Prison Litigation Reform Act of 1995. Plaintiff's argument thus lacks merit.

Therefore,

**IT IS HEREBY ORDERED** that the Magistrate Judge's Report and Recommendation issued August 28, 2008 (docket no. 36) is **APPROVED AND ADOPTED** as the Opinion of this Court.

**IT IS FURTHER ORDERED** that Defendant Sherry's Motion For Summary Judgment Due To Lack Of Exhaustion (docket no. 8) and Defendant Eicher's Motion For Summary Judgment Due To Lack Of Exhaustion (docket no. 27) are **GRANTED**. Plaintiff's claims against these Defendants are **dismissed without prejudice**.

**IT IS FURTHER ORDERED** that Defendants CMS and Kinnerly's Motion To Dismiss (docket no. 15) is **GRANTED**. Plaintiff's claims against these Defendants are **dismissed with prejudice**.

**IT IS FURTHER ORDERED** that Plaintiff's pending motions for default judgment (docket nos. 22 and 33) are **DISMISSED AS MOOT**.

This case is **concluded**.

Dated: September 24, 2008

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/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE